

Before the
Commission on Common Ownership Communities
Montgomery County, Maryland

In the matter of

Rose Hill Falls Community Association	x	
c/o Ursula Burgess, Esq.	x	
8133 Leesburg Pike	x	
Vienna, Virginia 22182,	x	
Complainant,		x
	x	
v.	x	Case No. 76-10
	x	June 30, 2011
	x	
Mark and Kristen Phillips	x	
15 Fire Princess Court		x
Rockville, Maryland 20850,		x
Respondents		x

DECISION AND ORDER

The above-captioned case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

On September 22, 2010, Rose Hill Falls Community Association ("Association" or "Complainant") filed a complaint against Mark and Kristen Phillips ("Respondents") with the Office of Consumer Protection asking the Commission to order the Phillips to remove roll shutters installed outside of their house for which they did not have approval from the Association. By letter received in the Office of Consumer Protection on October 27, 2010, Mr. Phillips responded to the complaint. In his response Mr. Phillips indicated that he would submit a formal application for the roll shutters and that he disagreed that they are in violation of the community architectural standard prohibiting "enclosures".

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to section 10B-11(e) of the Montgomery County Code on February 2, 2011, and the Commission voted that it was a matter within the Commission's jurisdiction. The case was scheduled for public hearing. The

hearing was conducted on May 11, 2011. At the conclusion of the hearing the record was closed.

Findings of Fact

Mr. and Mrs. Phillips own the property at 15 Fire Princess Court in Rockville, which is located within the Rose Hill Falls Community. The Rose Hill Falls Community Association is an unincorporated homeowners' association governed by the Maryland Homeowners Association Act, Md. Code Ann., Real Prop. §§ 11B-101 to 11B-116.

The Declaration of Covenants, Conditions, Easements and Restrictions ("Declaration") for the Rose Hill Falls Community Association includes language prohibiting any exterior alterations within the community without prior approval by the Architectural and Environmental Preservation Committee. The Committee is also expressly authorized to adopt rules and regulations as it may consider necessary or appropriate.

In 2006 the Phillips submitted an exterior alteration application to the Rose Hill Falls Architectural and Environmental Preservation Committee in accordance with the requirements of the Association Declaration. The application was approved. The Phillips made the alterations to their house. The record does not indicate when the work was completed.

In addition to the alterations approved by the Association, the Phillips installed roll shutters attached to the bottom of their deck. When rolled down the shutters enclose their patio beneath the deck. This element was not included in their application.

In February 2008 the Association became aware of the roll shutters and sent a letter to the Phillips advising them to submit an additional application for the "retractable wall devices". The Phillips subsequently met with the Architectural and Environmental Preservation Committee to discuss the shutters. The Phillips submitted an application for the shutters. The application was denied and the Phillips were so notified by letter dated June 4, 2009. The Phillips did not remove the roll shutters.

As a result of the continuing violation of community covenants resulting from the shutters not having been removed, the Association Board scheduled a hearing on April 7, 2010 and notified the Phillips by letter dated March 24, 2010. Mr. Phillips attended the hearing. By letter dated April 13, 2010, the Association informed the Phillips that the prior decision to deny approval for the shutters was upheld. In addition to finding that the shutters are not harmonious with community design and that they are in violation of the Architectural and Environmental Preservation Committee Procedures and Guidelines, which

prohibit “roofs or screens which would form an enclosure above or below” being added to a deck.

Discussion

Mr. Phillips testified that he regretted not filing a formal application for the shutters. He did have approval of all relevant municipal and county authorities and he argued that as higher authorities they supersede the Association. He argued that the Association should revisit the architectural standards as values in the community have increased. He also argued that since the shutters are not permanently fixed in place so as to form a permanent enclosure, they do not form an enclosure.

Conclusions of Law

The standard of review established in Maryland case law that the Commission applies in evaluating the validity of a homeowners association's decision to reject an architectural change application was set out in *Kirkley v. Seipelt*, 182 A.2d 430 (Md. 1957). In that case, the Maryland Court of Appeals held that the decision of a board of directors to reject an architectural modification must be upheld if it is "based upon a reason that bears some relation to the other buildings or the general plan of development" and that the rejection is "a reasonable determination made in good faith, and not high-handed, whimsical or captious in manner." The Association has concluded that the roll shutters installed at the Phillips' house do not meet the community architectural standards. The panel finds that the Association's denial of the roll shutters complies with the standard set forth in the *Kirkley* decision. The Phillips must have the approval of the Association concurrently with any other required approvals to keep the shutters.

The Commission finds that the Association's decision, rules and processes applicable to this case are reasonable.

ORDER

Based on the evidence in the record, and for the reasons set forth above, the Commission orders that the Phillips remove the rolling shutters installed under their deck within 60 days from the date of this Order.

The foregoing is concurred in by panel members Gelfound, Wilson and Stevens.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals.

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership Communities
June 30, 2011